

IC 35-48-4-14.7

Sale and storage of drugs containing ephedrine or pseudoephedrine; application; convenience packages; age requirements; identification; record keeping; suspicious orders and unusual thefts

Sec. 14.7. (a) This section does not apply to the following:

(1) Ephedrine or pseudoephedrine dispensed pursuant to a prescription.

(2) The sale of a drug containing ephedrine or pseudoephedrine to a licensed health care provider, pharmacist, retail distributor, wholesaler, manufacturer, or an agent of any of these persons if the sale occurs in the regular course of lawful business activities. However, a retail distributor, wholesaler, or manufacturer is required to report a suspicious order to the state police department in accordance with subsection (f).

(3) The sale of a drug containing ephedrine or pseudoephedrine by a person who does not sell exclusively to walk-in customers for the personal use of the walk-in customers. However, if the person described in this subdivision is a retail distributor, wholesaler, or manufacturer, the person is required to report a suspicious order to the state police department in accordance with subsection (f).

(b) The following definitions apply throughout this section:

(1) "Constant video monitoring" means the surveillance by an automated camera that:

(A) records at least one (1) photograph or digital image every ten (10) seconds;

(B) retains a photograph or digital image for at least seventy-two (72) hours;

(C) has sufficient resolution and magnification to permit the identification of a person in the area under surveillance; and

(D) stores a recorded photograph or digital image at a location that is immediately accessible to a law enforcement officer.

(2) "Convenience package" means a package that contains a drug having as an active ingredient not more than one hundred twenty (120) milligrams of ephedrine or pseudoephedrine, or both.

(3) "Ephedrine" means pure or adulterated ephedrine.

(4) "Pseudoephedrine" means pure or adulterated pseudoephedrine.

(5) "Suspicious order" means a sale or transfer of a drug containing ephedrine or pseudoephedrine if the sale or transfer:

(A) is a sale or transfer that the retail distributor, wholesaler, or manufacturer is required to report to the United States Drug Enforcement Administration;

(B) appears suspicious to the retail distributor, wholesaler, or manufacturer in light of the recommendations contained in Appendix A of the report to the United States attorney general by the suspicious orders task force under the federal Comprehensive Methamphetamine Control Act of 1996; or

(C) is for cash or a money order in a total amount of at least two hundred dollars (\$200).

(6) "Unusual theft" means the theft or unexplained disappearance from a particular retail store of drugs containing ten (10) grams or more of ephedrine, pseudoephedrine, or both in a twenty-four (24) hour period.

(c) This subsection does not apply to a convenience package. A person may sell a drug that contains the active ingredient of ephedrine, pseudoephedrine, or both only if the person complies with the following conditions:

(1) The person does not sell the drug to a person less than eighteen (18) years of age.

(2) The person does not sell drugs containing more than three (3) grams of ephedrine or pseudoephedrine, or both in one (1) transaction.

(3) The person requires:

(A) the purchaser to produce a state or federal identification card;

(B) the purchaser to complete a paper or an electronic log in a format approved by the state police department with the purchaser's name, address, and driver's license or other identification number; and

(C) the clerk who is conducting the transaction to initial or electronically record the clerk's identification on the log.

Records from the completion of a log must be retained for at least two (2) years. A law enforcement officer has the right to inspect and copy a log or the records from the completion of a log in accordance with state and federal law. A person may not sell or release a log or the records from the completion of a log for a commercial purpose. The Indiana criminal justice institute may obtain information concerning a log or the records from the completion of a log from a law enforcement officer if the information may not be used to identify a specific individual and is used only for statistical purposes. A retailer who in good faith releases information maintained under this subsection is immune from civil liability unless the release constitutes gross negligence or intentional, wanton, or willful misconduct. This subdivision expires June 30, 2012.

(4) The person stores the drug:

(A) behind a counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to a customer without the assistance of an employee; or

(B) directly in front of the pharmacy counter in the direct line of sight of an employee at the pharmacy counter, in an area under constant video monitoring, if the drug is sold in a retail establishment that:

(i) is a pharmacy; or

(ii) contains a pharmacy that is open for business.

(d) A person may not purchase drugs containing more than three (3) grams of ephedrine, pseudoephedrine, or both in one (1) week.

(e) This subsection only applies to convenience packages. A person may not sell drugs containing more than one hundred twenty (120) milligrams of ephedrine or pseudoephedrine, or both in any one (1) transaction if the drugs are sold in convenience packages. A person who sells convenience packages must secure the convenience packages in at least one (1) of the following ways:

(1) The convenience package must be stored not more than thirty (30) feet away from a checkout station or counter and must be in the direct line of sight of an employee at the checkout station or counter.

(2) The convenience package must be protected by a reliable anti-theft device that uses package tags and detection alarms designed to prevent theft.

(3) The convenience package must be stored in restricted access shelving that permits a purchaser to remove not more than one (1) package every fifteen (15) seconds.

(4) The convenience package must be stored in an area that is under constant video monitoring, and a sign placed near the convenience package must warn that the area is under constant video monitoring.

(f) A retail distributor, wholesaler, or manufacturer shall report a suspicious order to the state police department in writing.

(g) Not later than three (3) days after the discovery of an unusual theft at a particular retail store, the retailer shall report the unusual theft to the state police department in writing. If three (3) unusual thefts occur in a thirty (30) day period at a particular retail store, the retailer shall, for at least one hundred eighty (180) days after the date of the last unusual theft, locate all drugs containing ephedrine or pseudoephedrine at that particular retail store behind a counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to customers without the assistance of an employee.

(h) A unit (as defined in IC 36-1-2-23) may not adopt an ordinance after February 1, 2005, that is more stringent than this section.

(i) A person who knowingly or intentionally violates this section commits a Class C misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction under this section.

(j) Before June 30, 2007, the state police department shall submit a report to the legislative council detailing the effectiveness of this section in reducing the illicit production of methamphetamine. The report must describe the number of arrests or convictions that are attributable to the identification and logging requirements contained in this section, and must include recommendations for future action. The report must be in an electronic format under IC 5-14-6.

As added by P.L.192-2005, SEC.9. Amended by P.L.151-2006, SEC.27; P.L.186-2007, SEC.9.